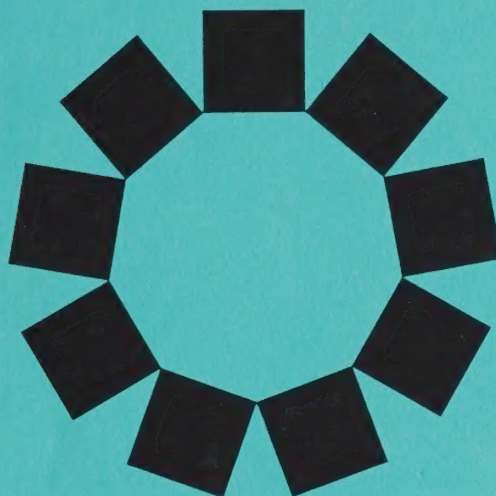


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UNIVERSITY OF CALIFORNIA

DRAFT RECOMMENDED REVISIONS TO THE CONSTITUTION OF THE STATE OF CALIFORNIA



**Approved for Review by the
Legislation and Governmental Organization Committee
July 27, 1994**



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DRAFT

DATE: August 8, 1994
TO: General Assembly Delegates
FROM: Mayor Peter W. Snyder, Legislation and Governmental Organization
Committee Chair
RE: ABAG Proposals for Constitutional Revisions

The attached document entitled, "Draft Recommended Revisions to the Constitution of the State of California" was prepared by ABAG's Legislation and Governmental Organization (L&GO) Committee on August 4, 1994, as part of its continuing work on restructuring government.

This document is being sent to all ABAG-member cities and counties to provide an opportunity for each jurisdiction to review it and take official action prior to the next General Assembly scheduled for Friday, December 9, 1994 in Oakland. (This review time was requested following the last General Assembly at which delegates adopted ABAG's Platform on Restructuring Government.)

We are asking you, as the delegate for your jurisdiction, to take the lead on the review of this document. If your jurisdiction would prefer a formal review, please make the arrangements to place it on your Board or Council agenda.

Should your jurisdiction choose to take action on the entire document or on specific portions of it, we ask that you communicate any adopted positions to ABAG by Friday, September 30, 1994.

All responses will be compiled by the L&GO Committee and submitted to the Executive Board, along with the committee's own recommendations, for approval as the primary General Assembly discussion topic. If approved, the entire package will be transmitted to General Assembly delegates to assist in adoption of a final position paper on constitutional amendments. The final paper would then be sent to the Governor, the Legislature and the Constitutional Revision Commission.

If your jurisdiction chooses not to respond in writing, you will be asked, as the delegate, to communicate your ideas and suggestions to the General Assembly.

Please direct any responses or communications to Cathryn Hilliard, Director of Government and Public Affairs, P.O. Box 2050, Oakland, CA 94604. (If you have any questions, please call Cathryn at 510/464-7914 or Michelle Fadelli at 510/464-7922.)

Please work with your city manager or county administrator to agendize the item in August or September in order to meet the September 30 deadline. Thank you.

cc: General Assembly Alternates, City Managers and County Administrators

INTRODUCTION

In 1993, the Legislature adopted, and the Governor signed, Senate Bill 16 by Lucy Killea (Chapter 1243). The bill mandated the formation of a Constitutional Revision Commission to review the budget process and the relationship between the State and local governments related to finances and programmatical responsibilities — and required the Commission to submit a report with recommendations to the Governor and the Legislature by August 1, 1995.

The 23-member commission was required to consist of ten members appointed by the Governor (no more than six of one party), five members appointed by the Senate Rules Committee (no more than three of one party), five members appointed by the Speaker of the Assembly (no more than three of one party), and three additional members: the Chief Justice of the Supreme Court, the Legislative Analyst, and the Director of the Department of Finance.

The Constitutional Revision Commission met for the first time on May 3, 1994, and is expected to meet bi-monthly through August of 1995.



For years, cities and counties have been struggling with eroding revenue supplies while facing increased demands for services. The decreasing revenues resulted from a combination of an downturn in the California economy and the State's shifting of funds away from local governments to offset State shortages. The crisis stage was reached in 1993 when the State transferred \$2.6 billion in property tax revenues away from cities and counties to help balance the State Budget. Local governments want the shell game stopped.

State officials began a dialogue to redefine the State's role as a service provider and to re-examine the fiscal relationship between the State and local governments. Specific proposals to "restructure government" have been produced by the Legislative Analyst and the Governor.

In response to those proposals, ABAG's General Assembly adopted its own "Platform on Restructuring Government" on April 21, 1994, which was distributed to the Governor, the Legislature, the Constitutional Revision Commission, and other parties interested in government reform. In the course of its work in drafting that document, ABAG's Legislation and Governmental Organization (L&GO) Committee learned that restructuring government proposals would be pursued and potentially enacted through changes in administrative policy, legislation, the State Budget, as well as through amendments to the State Constitution.

As a continuation of its work on restructuring government, the L&GO Committee began reviewing the State Constitution in May of 1994. The committee analyzed a wide array of issues in the Constitution, heard presentations from governmental and scholastic sources, and discussed potential reforms to the Constitution which may enhance governmental reform in California, particularly reforms related to the working relationship between the State and local governments.

This document entitled, "Draft Recommended Revisions to the Constitution of the State of California," is the product of the L&GO Committee and is a compilation of its work through August 4, 1994.

The document consists of a list of provisions from the Constitution, each followed by a specific recommendation for action. The Constitutional provisions are presented in the order in which they appear in the Constitution; item numbering does not indicate any order of priority assigned by the L&GO Committee. Recommendations are varied, including: transferring a provision from the Constitution to statute, complete deletion from the Constitution, modification, or referral to an expert committee.

These recommended revisions to the State Constitution are being distributed to ABAG-member cities and counties around the Bay in order to provide an opportunity for official action by all jurisdictions prior to ABAG's next General Assembly scheduled for December 9 in Oakland. Following General Assembly approval, the revised document will be forwarded to the Governor, Legislature and the Constitutional Revision Commission as ABAG's official positions on constitutional revisions.



Members of the expanded L&GO Committee that have contributed to the drafting of this document include:

Chair: Peter W. Snyder, Mayor - City of Dublin
Vice Chair: Paul Kloecker, Councilmember, City of Gilroy

Members: Peter Foppiano, Councilmember - City of Healdsburg
Mary Griffin, Supervisor - San Mateo County
Patricia Hilligoss, Mayor - City of Petaluma
Ted Lempert, Supervisor - San Mateo County
Richard Spees, Councilmember - City of Oakland
Tom Torlakson, Supervisor - Contra Costa County
Karen Tucker, Mayor - City of Saratoga
Barbara Waldman, Councilmember - City of Sunnyvale
Lonnie Washington, Jr., Councilmember - City of Richmond
(Karen Anderson, Councilmember - City of Saratoga - until 6/28/94)

Members of the Expanded Committee: Jane Bartke, Mayor - City of El Cerrito
Anthony Cermak, Mayor, City of Sonoma
Gretchen Mariotti, Councilmember - City of Pinole
Charlotte Powers, Councilmember - City of San José
Ed Solomon, Mayor - City of Napa
Linda Spiro, Councilmember - City of Rohnert Park



Please contact Michelle Fadelli at 510/464-7922 or Cathryn Hilliard at 510/464-7914 in the Government and Public Affairs Office with any questions.

DRAFT RECOMMENDED REVISIONS TO THE CONSTITUTION OF THE STATE OF CALIFORNIA

NOTE: The page number reference after each item, following the article and section number from the Constitution, refer to a 1993 publication by the California Legislature which includes the Constitution of the United States and the Constitution of the State of California. This publication is available from ABAG's Government and Public Affairs Office, or from the Legislative Bill Room at 916/445-2323.

1. Approval of Initiatives and Referendums - (a) An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise. If a referendum petition is filed against a part of a statute, the remainder shall not be delayed from going into effect.

(b) If provisions of 2 or more measure approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail.

(c) The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors, unless the initiative statute permits amendment or repeal without their approval.

(d) Prior to circulation of an initiative or referendum petition for signatures, a copy shall be submitted to the Attorney General who shall prepare a title and summary of the measure as provided by law.

(e) The Legislature shall provide the manner in which petitions shall be circulated, presented, and certified, and measures submitted to the electors. [Article II, Section 10]. See pages 94 and 95.

Recommendation: Prior to circulation:

(1) Require an initiative or referendum to be submitted to the Attorney General or the Legislative Counsel for preparation of a legal review including a constitutionality review, and require that review to be presented to signators and/or voters;

(2) Require the initiative or referendum to be submitted to the Secretary of State or Legislative Analyst for preparation of a brief summary stating the clear intent of the measure in lay terms, and require that summary to be presented to prospective signators;

(3) Require the true identity of the sponsors to be in bold print at the top of any sheet used for gathering signatures and on the ballot pamphlet ; if a PAC or other committee is the sponsor, require the major contributors to be clearly identified.

THE
CONSTITUTION OF THE STATE OF CALIFORNIA

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2. Local Power of Initiative and Referendum - Initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide. This section does not affect a city having a charter. [Article II, Section 11]. See page 95.

Recommendation: Prior to circulation:

(1) Require an initiative or referendum to be submitted to the Attorney General or the Legislative Counsel for preparation of a legal review including a constitutionality review, and require that review to be presented to signators and/or voters;

(2) Require the initiative or referendum to be submitted to the Secretary of State or Legislative Analyst for preparation of a brief summary stating the clear intent of the measure in lay terms, and require that summary to be presented to prospective signators;

(3) Require the true identity of the sponsors to be in bold print at the top of any sheet used for gathering signatures and on the ballot pamphlet ; if a PAC or other committee is the sponsor, require the major contributors to be clearly identified.

3. Restriction on Incumbency/Prop. 140 - The people find and declare that the Founding Fathers established a system of representative government based upon free, fair and competitive elections. The increased concentration of political power in the hands of incumbent representatives has made our electoral system less free, less competitive, and less representative.

The ability of legislators to serve unlimited number of terms, to establish their own retirement system, and to pay for staff and support services at State expense contribute heavily to the extremely high number of incumbents who are reelected. These unfair incumbent advantages discourage qualified candidates from seeking public office and create a class of career politicians, instead of the citizen representatives envisioned by the Founding Fathers. These career politicians become representatives of the bureaucracy, rather than of the people whom they are elected to represent.

To restore a free and democratic system of fair elections, and to encourage qualified candidates to seek public office, the people find and declare that the powers of incumbency must be limited. Retirement benefits must be restricted, state-financed incumbent staff and support services limited, and limitations placed upon the number of terms which may be served. [Article IV, Section 1.5]. See pages 101 and 102.

Recommendation: Remove from Constitution and consider reversal or modification.

4. Term Limitations/Prop. 140 - (a) The Senate has a membership of 40 Senators elected for 4-year terms, 20 to begin every 2 years. No Senator may serve more than 2 terms.

The Assembly has a membership of 80 members elected for 2-year terms. No member of the Assembly may serve more than 3 terms. [Article IV, Section 2]. See page 102.

Recommendation: *Remove from Constitution and consider reversal or modification.*

5. Retirement Benefits/Prop. 140 - (c) The Legislature may not provide retirement benefits based on any portion of a monthly salary in excess of five hundred dollars (\$500) paid to any Member of the Legislature unless the Member receives the greater amount while serving as a Member in the Legislature. The Legislature may, prior to their retirement, limit the retirement benefits payable to Members of the Legislature who serve during or after the term commencing in 1967.

When computing the retirement allowance of a Member who serves in the Legislature during the term commencing 1967 or later, allowance may be made for increases in the cost of living if so provided by statute, but only with respect to increases in the cost of living occurring after retirement of the Member. However, the Legislature may provide that no Member shall be deprived of a cost of living adjustment based on a monthly salary of five hundred dollars (\$500) which has accrued prior to the commencement of the 1967 Regular Session of the Legislature. [Article IV, Section 4]. See page 104.

Recommendation: *The Legislature should have the same and equal rights and retirement benefits through PERS as other state employees.*

6. Legislative Expenditures - In the fiscal year immediately following the adoption of this Act, the total aggregate expenditures of the Legislature for the compensation of members and employees of, and the operating expenses and equipment for, the Legislature may not exceed an amount equal to nine hundred fifty thousand dollars (\$950,000) per member for that fiscal year or 80 percent of the amount of money expended for those purposes in the preceding year, whichever is less. For each fiscal year thereafter, the total aggregate expenditures may not exceed an amount equal to that expended for those purposes in the preceding fiscal year, adjusted and compounded by an amount equal to the percentage increase in the appropriations limit for the State established pursuant to Article XIII B. [Article IV, Section 7.5]. See page 107.

Recommendation: *The Constitution may provide for an expenditure limit, however the amount should be specified in statute to more easily be adjusted for inflation and changes in need for expenditures.*

7. State Budget - Appropriations from the General Fund of the State, except appropriations for the public schools, are void unless passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring. [Article IV, Section 12(d)]. See page 110.

Recommendation: *Delete requirement for two-thirds vote, and replace with requirement for majority vote.*

8. Lotteries - The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State. [Article IV, Section 19(a)]. See page 111.

Recommendation: *This item need not be in the Constitution and should be dealt with in statute.*

9. Bingo - Notwithstanding subdivision (a) the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes. [Article IV, Section 19(c)]. See page 111.

Recommendation: *This item need not be in the Constitution and should be dealt with in statute.*

10. Casinos - The Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey. [Article IV, Section 19(e)]. See page 111.

Recommendation: *This item need not be in the Constitution and should be dealt with in statute.*

11. Distribution of Power/Construction of Article - The provisions of Sections 1(b) (except for the second sentence), 3(a), 4, and 5 of this Article relating to matters affecting the distribution of powers between the Legislature and cities and counties, including matters affecting supersession, shall be construed as a restatement of all related provisions of the Constitution in effect immediately prior to the effective date of this amendment, and as making no substantive change.

The terms general law, general laws, and laws, as used in this Article, shall be construed as a continuation and restatement of those terms as used in the Constitution in effect immediately prior to the effective date of this amendment, and not as effecting a change in meaning. [Article XI, Section 13]. See page 153.

Recommendation: *Delete or amend as necessary to accommodate other proposed constitutional revisions.*

12. New Local Governments/Property Taxes - A local government formed after the effective date of this section, the boundaries of which include all or part of two or more counties, shall not levy a property tax unless such a tax has been approved by a majority vote of the qualified voters of that local government voting on the issue of the tax. [Article XI, Section 14]. See page 154.

Recommendation: *In light of Proposition 13 limits, this provision could be deleted from the Constitution.*

13. Vehicle License Fees - All revenues from taxes imposed pursuant to the Vehicle License Fee Law, or its successor, other than fees on trailer coaches and mobilehomes, over and above the costs of collection and any refunds authorized by law, shall be allocated to counties and cities according to statute. [Article XI, Section 15(a)]. See page 154.

Recommendation: *This item may be considered for modification by an appointed commission as part of an entire package of revenue and taxation policy, but only in the context of a comprehensive reform package with constitutionally guaranteed funding for local governments.*

14. Homeowner's Exemption - (The following is exempt from property taxation:) \$7,000 of the full value of a dwelling, as defined by the Legislature, when occupied by an owner as his principle residence, unless the dwelling is receiving another real property exemption. [Article XIII, Section 3(k)]. See page 160.

Recommendation: *This item should be considered for modification by an appointed commission as part of an entire package of revenue and taxation policy reform, and need not be in the Constitution.*

15. Maximum Property Tax Rates - The Legislature may provide maximum property tax rates and bonding limits for local governments. [Article XIII, Section 20] See page 168.

Recommendation: *This item should be considered for modification by an appointed commission as part of an entire package of revenue and taxation policy reform, and need not be in the Constitution.*

16. School District Taxes - Within such limits as may be provided under Section 20 of this Article, the Legislature shall provide for an annual levy by county governing bodies of school district taxes sufficient to produce annual revenues for each district that the district's board determines are required for its schools and district functions. [Article XIII, Section 21]. See page 168.

Recommendation: *This item should be considered for modification by an appointed commission as part of an entire package of revenue and taxation policy reform, and need not be in the Constitution.*

17. Property Tax Limitation - Not more than 25 percent of the total appropriations from all funds of the State shall be raised by means of taxes on real and personal property according to the value thereof. [Article XIII, Section 22]. See page 168.

Recommendation: *This item should be considered for modification by an appointed commission as part of an entire package of revenue and taxation policy reform, and need not be in the Constitution.*

18. Local Government Tax Sharing - The Legislature may authorize counties, cities and counties, and cities to enter into contracts to apportion between them the revenue derived from any sales or use tax imposed by them which is collected for them by the State. Before any such contract becomes operative, it shall be authorized by a majority of those voting on the question in each jurisdiction at a general or direct primary election. [Article XIII, Section 29]. See page 172.

Recommendation: *This item need not be in the Constitution, and should be dealt with in statute.*

19. AVT on Real Property - The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. [Article XIII A, Section 1]. See page 17.

Recommendation: *This item should be considered for modification by an appointed commission as part of an entire package of revenue and taxation policy reform, and need not be in the Constitution.*

20. Full Cash Value - The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or thereafter, the appraised value of real property when purchased, newly constructed, or a change of ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation. For purposes of this section, "newly constructed" does not include real property which is reconstructed after a disaster, as declared by the Governor, where the fair market value of the real property, as reconstructed is comparable to its fair market value prior to the disaster. Also, the term "newly constructed" shall not include the portion of reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, necessary to comply with any local ordinance relating to seismic safety during the first 15 years following that reconstruction or improvement. [Article XIII A, Section 2(a)]. See page 174.

Recommendation: *This item should be considered for modification by an appointed commission as part of an entire package of revenue and taxation policy reform, and need not be in the Constitution.*

21. Base Year Value Transfer for Persons Over 55 - The Legislature may provide that under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement dwelling of equal or lesser value located within the same county and purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property. For purposes of this section, "any person over the age of 55 years" includes a married couple one member of which is over the age of 55 years. For purposes of this section, "replacement

dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. For purposes of this section, a two-dwelling unit shall be considered as two separate single-family dwellings. This paragraph shall apply to any replacement dwelling which was purchased or newly constructed on or after November 5, 1986. [Article XIII A, Section 2(a)]. See page 174.

Recommendation: *This item should be considered for modification by an appointed commission as part of an entire package of revenue and taxation policy reform, and need not be in the Constitution.*

22. Two Percent Cap on Inflationary Increase to Full Cash Value - The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable date for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value. [Article XIII A, Section 2(b)]. See page 175.

Recommendation: *This item should be considered for modification by an appointed commission as part of an entire package of revenue and taxation policy reform, and need not be in the Constitution.*

23. Two-Thirds Vote for State Taxes - Any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed. [Article XIII A, Section 3]. See page 177.

Recommendation: *Delete requirement for two-thirds vote, and replace with requirement for a vote of 55%.*

24. Two-Thirds Vote of the People for Special Local Taxes - Cities, counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such city, county, or special district. [Article XIII A, Section 4]. See page 177.

Recommendation: *Delete requirement for two-thirds vote and replace with requirement for vote of 55%.*

25. State and Local Appropriations Limits - The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided in this article. [Article XIII B, Section 1]. See page 178.

Recommendation: *This item should be considered for modification by an appointed commission as part of an entire package of revenue and taxation policy.*

26. Return of Excess State Revenues - Fifty percent of all revenues received by the State in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the State in compliance with this article during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years. [Article XIII B, Section 2(a)(2)]. See page 178.

Recommendation: *This item should be considered for modification by an appointed commission as part of an entire package of revenue and taxation policy.*

27. Return of Excess Local Revenues - All revenues received by an entity of government, other than the State, in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the entity in compliance with this article during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years. [Article XIII B, Section 2(b)]. See page 179.

Recommendation: *This item should be considered for modification by an appointed commission as part of an entire package of revenue and taxation policy.*

28. Contingency Funds Subject to Appropriations Limit - Each entity of government may establish such contingency, emergency, unemployment, reserve, retirement, sinking fund, trust, or similar funds as it shall deem reasonable and proper. Contributions to any such fund, to the extent that such contributions are derived from the proceeds of taxes, shall for purposes of this Article constitute appropriations subject to limitation in the year of contribution. Neither withdrawals from any such fund, nor expenditures of (or authorizations to expend) such withdrawals, nor transfers between or among such funds, shall for purposes of this Article constitute appropriations subject to limitation. [Article XIII B, Section 5]. See page 180.

Recommendation: *This item should be considered for modification by an appointed commission as part of an entire package of revenue and taxation policy.*

29. Prudent State Reserve - The Legislature shall establish a prudent State reserve fund in such amount as it shall deem reasonable and necessary. Contributions to, and withdrawals from, the fund shall be subject to the provisions of Section 5 of this Article. [Article XIII B, Section 5.5]. See page 180.

Recommendation: *This item should be considered for modification by an appointed commission as part of an entire package of revenue and taxation policy.*

30. Tobacco Surtax - "Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from the Cigarette and Tobacco Products Surtax Fund created by the Tobacco Tax and Health Protection Act of 1988. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the Cigarette and Tobacco Surtax Fund created by the Tobacco Tax and Health Protection Act of 1988. [Article XIII B, Section 12]. See page 183.

Recommendation: *This item need not be in the Constitution, and should be considered for modification by an appointed commission as part of an entire package of revenue and taxation policy.*

31. Two-Thirds Vote for Bond Measures - The Legislature shall not, in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate with any previous debts or liabilities, exceed the sum of \$300,000... unless the same shall be authorized by law for some single object or work to be distinctly specified therein which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within 50 years of the time of the contracting thereof, and shall be paid and discharged, and such law may make provision for a sinking fund to pay the principal of such debt or liability to commence at a time after the incurring of such debt or liability of not more than a period of one-fourth of the time of maturity of such debt or liability; but no such law shall take effect unless it has been passed by a two-thirds vote of all the members elected to each house of the Legislature and until, at a general election or at a direct primary, it shall have been submitted to the people and shall have received a majority of all the votes cast for and against it at such election; and all moneys raised by authority of such law shall be applied only to the specific object therein stated or to the payment of the debt thereby created. [Article XVI, Section 1]. See page 188-189.

Recommendation: *Delete requirement for two-thirds vote and replace with requirement for vote of 55.*

32. School Funding Priority - From all State revenues there shall first be set apart the moneys to be applied by the State for support of the public school system and public institutions of higher education. [Article XVI, Section 8(a)]. See page 195.

Recommendation: *This item should be replaced with a statement declaring California's commitment to education as a top priority.*

33. Minimum School Funding - Commencing with the 1990-91 fiscal year, the moneys to be applied by the State for the support of school districts and community college districts shall be

not less than the greater of the following amounts: (1) The amount which, as a percentage, was appropriated for school districts and community college districts in FY 1986-87; (2) (In a fiscal year in which the percentage growth in California per capita personal income is less than or equal to the percentage growth in per capita General Fund revenues plus one half of one percent), not less than the total allocations to school districts and community college districts from General Fund proceeds of taxes in the prior fiscal year excluding any revenues allocated pursuant to subdivision (a) of Section 8.5 (adjusted for changes in enrollment and for the change in the cost of living; (3) The amount which, as a percentage, was appropriated for school districts and community college districts in FY 1986-87 excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment and per capita General Fund revenues. [Article XVI, Section 8(b)]. See page 195.

Recommendation: *This item should be replaced with a statement declaring California's commitment to education as a top priority.*



The following item is not currently in the Constitution but is recommended for addition.

34. Brown Act Compliance for All Elected Officials and Executive Officers -

Recommendation: *A new constitutional provision should be drafted to require all elected officials, including but not limited to officials elected to statewide office and the Legislature, and all appointed officers in the executive branch to be subject to all the provisions of the Ralph M. Brown Act.*



The following items are not related to the relationship between the State and local governments, state and local financing, or general governmental reform. However, related recommendations are made in terms of the goal of streamlining the Constitution.

35. Fish and Game - (a) The Legislature may provide for division of the State into fish and game districts and may protect fish and game in districts or parts of districts.

(b) There is a Fish and Game Commission of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for 6-year terms and until their successors are appointed and qualified. Appointment to fill a vacancy is for the unexpired portion of the term. The Legislature may delegate to the commission such powers relating to the protection and prorogation of fish and game as the Legislature sees fit. A member of the commission may be removed by concurrent resolution adopted by each house, a majority of the membership concurring. [Article IV, Section 20]. See page 112.

Recommendation: *This item need not be in the Constitution and should be dealt with in statute.*

36. Marine Resources Protection Act of 1990 - Section 1. This article shall be known and may be cited as the Marine Resources Act of 1990.

Section 2. (a) "District" means a fish and game district as defined in the Fish and Game Code by statute on January 1, 1990.

(b) Except as specifically provided in this article, all references to Fish and Game Code sections, articles, chapters, parts, and divisions are defined as those statutes in effect on January 1, 1990.

(c) "Ocean waters" means the waters of the Pacific Ocean regulated by the State.

(d) "Zone" means the Marine Resources Protection zone established pursuant to this article. The zone consists of the following:

(1) In waters less than 70 fathoms or within one mile, whichever is less, around the Channel Islands consisting of the Islands of San Miguel, Santa Rosa, Santa Cruz, Anacapa, San Nicolaus, Santa Barbara, Santa Catalina, and San Clemente.

(2) The area within three nautical miles offshore of the mainland coast, and the area within three nautical miles off any manmade breakwater, between a line extending due west from Point Arguello and a line extending due west from the Mexican Border.

(3) In waters less than 35 fathoms between a line running 180 degrees true from Point Fermin and a line running 270 degrees true from the south jetty of Newport Harbor.

Section 3. (a) From January 1, 1991, to December 31, 1993, inclusive, gill nets or trammel nets may only be used in the zone pursuant to a nontransferable permit issued by the Department of Fish and Game pursuant to Section 5.

(b) On and after January 1, 1994, gill nets and trammel nets shall not be used in the zone.

Section 4. (a) Notwithstanding any other provision of law, gill nets and trammel nets may not be used to take any species of rockfish.

(b) In ocean waters north of Point Arguello on and after the effective date of this article, the use of gill nets and trammel nets shall be regulated by the provisions of Article 4 (commencing with Section 8660), Article 5 (commencing with Section 8680), and Article 6 (commencing with Section 8720) of Chapter 3 of Part 3 of Division 6 of the Fish and Game Code, or any regulation or order issued pursuant to these articles, in effect on January 1, 1990, except that as to Sections 8680, 8681, 8681.7, and 8682, and subdivisions (a) through (f), inclusive of Section 8681.5 of the Fish and Game Code, or any regulation or order issued pursuant to these sections, the provisions in effect on January 1, 1989 shall control where not in conflict with other provisions of this article, and shall be applicable to all ocean waters. Notwithstanding the provisions of this section, the Legislature shall not be precluded from imposing more restrictions on the use and/or possession of gill nets or trammel nets. The Director of the Department of Fish and Game shall not authorize the use of gill nets or trammel nets in any area where the use is not permitted even if the director makes specified findings.

Section 5. The Department of Fish and Game shall issue a permit to use a gill net or trammel net in the zone for the period specified in subdivision (a) of Section 3 to any applicant who meets both of the following requirements:

(a) Has a commercial fishing license issued pursuant to Sections 7850-7852.3 of the Fish and Game Code.

(b) Has a permit issued pursuant to Section 8681 of the Fish and Game Code and is presently the owner or operator of a vessel equipped with a gill net or trammel net.

Section 6. The Department of Fish and Game shall charge the following fees for permits issued pursuant to Section 5 pursuant to the following schedule:

Calendar Year	Fee
1991	\$250
1992	\$500
1993	\$1000

Section 7. (a) Within 90 days after the effective date of this section, every person who intends to seek compensation and provided in subdivision (b) shall notify the Department of Fish and Game, on forms provided by the department, of that intent. Any person who does not submit the form within that 90-day period shall not be compensated pursuant to subdivision (b). The department shall publish a list of all persons submitting the form within 120 days after the effective date of this section.

(b) After July 1, 1993, and before January 1, 1994, any person who holds a permit issued pursuant to Section 5 and operates in the zone may surrender that permit to the department and agree to permanently discontinue fishing with gill or trammel nets in the zone, for which he or she shall receive, beginning on July 1, 1993, a one time compensation which shall be based upon the average annual ex vessel value of the fish other than any species of rockfish landed by a fisherman, which were taken pursuant to a valid general gill net or trammel net permit issued pursuant to Sections 8681 and 8682 of the Fish and Game Code within the zone during the years 1983 through 1987, inclusive. The department shall verify those landings by reviewing logs and landing receipts submitted to it. Any person who is denied compensation by the department as a result of the department's failure to verify landings may appeal that decision to the Fish and Game Commission.

(c) The State Board of Control shall, prior to the disbursement of any funds, verify the eligibility of each person seeking compensation and the amount of the compensation to be provided in order to ensure compliance with this section.

(d) Unless the Legislature enacts any required enabling legislation to implement this section on or before July 1, 1993, no compensation shall be paid under this article.

Section 8. (a) There is hereby created the Marine Resources Protection Account in the Fish and Game Preservation Fund. On and after January 1, 1991, the Department of Fish and Game shall collect any and all fees required by this article. All fees received by the department pursuant to this article shall be deposited in the account and shall be expended or encumbered to compensate persons who surrender permits pursuant to Section 7 or to provide for administration of this article. All funds received by the department during any fiscal year pursuant to this article which are not expended during that fiscal year to compensate persons as set forth in Section 7 or to provide for administration shall be used only for those purposes. All interest accrued from the department's retention of fees received pursuant to this article shall be credited to the account. The accrued interest may only be expended for the purposes authorized by this article. The account shall continue in existence, and the requirement to pay fees under this article shall remain in effect, until the compensation provided in Section 7 has been fully funded or until January 1, 1995, whichever occurs first.

(b) An amount, not to exceed 15 percent of the total annual revenues deposited in the account excluding any interest accrued or any funds carried over from a prior fiscal year may be expended for the administration of this article.

(c) In addition to a valid California sportfishing license issued pursuant to Sections 7149, 7149.1, or 7149.2 of the Fish and Game Code and any applicable sport license stamp issued pursuant to the Fish and Game Code, a person taking fish from ocean waters south of a line extending due west from Point Arguello for sport purposes shall have permanently affixed to that person's sportfishing license a marine resource protection stamp which may be obtained from the department upon payment of a fee of three dollars (\$3). This subdivision does not apply to any one-day fishing license.

(d) In addition to a valid California commercial passenger fishing boat license required by Section 7920 of the Fish and Game Code, the owner of any boat or vessel who, for profit, permits any person to fish from the boat or vessel in ocean waters south of a line extending due west from Point Arguello, shall obtain and permanently affix to the license a commercial marine resources protection stamp which may be obtained from the department upon payment of a fee of three dollars (\$3).

(e) The department may accept contributions or donations from any person who wishes to donate money to be used for the compensation of commercial gill net and trammel net fishermen who surrender permits under this article.

(f) This section shall become inoperative on January 1, 1995.

Section 9. Any funds remaining in the Marine Resources Protection Account in the Fish and Game Preservation Fund on or after January 1, 1995, shall, with the approval of the Fish and Game Commission, be used to provide grants to colleges, universities, and other bonafide scientific research groups to fund marine resource related scientific research within the ecological reserves established by Section 14 of this act.

Section 10. On or before December 31 of each year, the Director of Fish and Game shall prepare and submit a report to the Legislature regarding the implementation of this article including an accounting of all funds.

Section 11. It is unlawful for any person to take, possess, receive, transport, purchase, sell, barter, or process any fish obtained in violation of this article.

Section 12. To increase the State's scientific and biological information on the ocean fisheries of this State, the Department of Fish and Game shall establish a program whereby it can monitor and evaluate the daily landings of fish by commercial fishermen who are permitted under this article to take these fish. The cost of implementing this monitoring program shall be borne by the commercial fishing industry.

Section 13. (a) The penalty for a first violation of the provisions of Sections 3 and 4 of this article is a fine of not less than one thousand dollars (\$1000) and not more than five thousand dollars (\$5000) and a mandatory suspension of any license, permit or stamp to take, receive, transport, purchase, sell, barter or process fish for commercial purposes for six months. The penalty for a second or subsequent violation of the provisions of Sections 3 and 4 of this article is a fine of not less than two thousand five hundred dollars (\$2,500) and not more than ten thousand dollars (\$10,000) and a mandatory suspension of any license, permit, or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes for one year.

(b) Notwithstanding any other provisions of law, a violation of Section 8 of this article shall be deemed a violation of the provisions of Section 7145 of the Fish and Game Code and the

penalty for such a violation shall be consistent with the provisions of Section 12002.2 of said code.

(c) If a person convicted of a violation of Section 3, 4, or 8 of this article is granted probation, the court shall impose as a term of condition of probation, in addition to any other term or condition of probation, that the person pay at least the minimum fine prescribed in this section.

Section 14. Prior to January 1, 1994, the Fish and Game Commission shall establish four new ecological reserves in ocean waters along the mainland coast. Each ecological reserve shall have a surface area of at least two square miles. The commission shall restrict the use of these ecological reserves to scientific research relating to the management and enhancement of marine resources.

Section 15. This article does not preempt or supersede any other closures to protect any other wildlife, including sea otters, whales, and shorebirds.

Section 16. If any provision of this article or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this article, which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

[Article X B, Section 1-16]. See pages 144-149.

Recommendation: This item need not be in the Constitution and should be dealt with in statute.

For more information on this document, please contact Michelle Fadelli at 510/464-7922 or Cathryn Hilliard at 510/464-7914.

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